In *London Passenger Transport* v. *Moscrop* [1] at page 344 Viscount Maugham after reminding himself that the power to pass declaratory judgments should be exercised with "great care and jealousy" and with "extreme caution" went on to deal with non-joinder of interested parties thus:—

"I also think it desirable to mention the point as to parties in cases where a declaration is sought . . . . the persons really interested were not before the court, for not a single member of the Transport Union was, nor was the union itself, joined as a defendant in the action. It is true that in their absence they were not strictly bound by the declaration, but the courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or othewise, before a declaration by its terms affecting their rights is made."

On merits, the main ground relied on by the plaintiff is that under the Land Code and the Notice of Sale Rules 1933 there is no requirement that the registered proprietor or his agent should be personally served with notice of sale and annulment of sale on that ground alone is insufficient. Section 204 reads:—

"Upon any sum payable becoming an arrear the collector shall, subject tc the provisions of any rules made under sub-section (ii), use reasonable diligence in causing to be served on the proprietor of the land affected a notice of sale in the prescribed Form, which shall be sealed with the collector's seal of office."

Section 221(1) reads:—

"The Mentri Besar may at any time before a sale under this Part has become final and conclusive upon proof to his satisfaction that the sale was had contrary tc the provisions of this Part and that material irregularities occurred or that any proprietor or other person will suffer excessive hardship by reason of such sale, annul such sale by order in writing."

Section 220 reads:—

"A sale under this Part shall become final and conclusive on the expiry of three months from the date thereof unless

(c) the sale has prior to the date of such expiry been annulled by the Mentri Besar under the provisions of section 221;"

To my mind, when section 204 imposes a requirement on the collector to use reasonable diligence to serve the notice of sale on the proprietor, it expects the collector to use such care that "men generally would exert in respect of their own concerns". A careless service on a stranger without proper enquiry as to the whereabouts of the registered proprietor would be contrary to the provisions of the section and an irregularity, the degree of which may or may not be material. If, however, after an enquiry, he could not be found or is found to be resident outside the district, then under the rules no personal service need be made. Any irregularity in regard to service would then be protected by sub-section (iii).

Under section 221, the Mentri Besar may annul the sale upon proof to his satisfaction that —

(i) the sale was had contrary to the law; and

(ii) that material irregularities occurred.

The discretion is clearly his and the court in the exercise of its supervisory jurisdiction has always been slow in interfering with the exercise of such discretion unless, amongst other things, there was bad faith or want of jurisdiction. Clearly, in this case, there was no question of *mala fides* or want of jurisdiction. Once there is jurisdiction to make such an order and there are some grounds for making it, it is not for this court to question the adequacy or otherwise of the grounds.

Consequently, this claim will be dismissed with costs.

*Application dismissed.*

Solicitors: *Athi Nahappan & Co.*

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## COMPTROLLER-GENERAL OF INLAND REVENUE, MALAYSIA v. WENG LOK MINING CO. LTD.

**[O.C.J. (Raja Azlan Shah J.) April 3, 1969]**

**[K.L. — Civil Court No. 1787 of 1968]**

*Practice anl Procedure — Specially indorsed writ — R.S.C., 1957, O. 14 — Delay in application for summary judgment — No bona fide defence shown — Income Tax Ordinance, 1947, s. 86(3).*

The plaintiff had claimed by specially indorsed writ an amount due for income tax and penalty. The writ was issued on October 4, 1968, an appearance was entered on October 15, 1968 and subsequently a denfence was filed on October 31, 1968. The plaintiff took no further steps until January 31, 1969 when he filed an application for summary judgment under R.S.C., 1957, O. 14. The defendant company sought to set aside the application on the ground of undue delay on the part of the plaintiff.

**Held:** (1) in the circumstances of this case the delay of three months was not inordinate and did not warrant a dismissal of the application;

(2) the defendant company had not shown that it had a *bona fide* defence or that there was any question of fact or law which ought to be argued in this case and therefore the plaintiff's application for summary judgment must be allowed.

*Cases referred to:*—

(1) *McLardy* v. *Slateum* (1890), 24 Q.B.D. 504.

(2) *Comptroller of Income Tax* v. *A. Company Ltd.* [1966] 2 M.L.J. 282.

(3) *Comptroller of Income Tax* v. *R.S.T.* [1962] M.L.J. 216.

(4) *Jacobs* v. *Booth's Distillery Co.* (1900), 85 L.T. 262, H.L.

CIVIL SUIT.

*R. Padmanabhan* for the applicant.

*S.T. Chung* for the respondent.

*Cur. Adv. Vult.*

**Raja Azlan Shah J.:** The plaintiff claimed, by way of a specially endorsed writ of summons, a sum of $85,150.74 being the alleged amount of income tax and penalty due and payable by the defendant company under section 86(1) of the Income Tax Ordinance, 1947. The writ was issued on 4th October, 1968 and an appearance was entered on the 15th October and subsequently a defence was filed on 31st October, 1968. The plaintiff took no further steps until 31st January, 1969 when he filed an application for summary judgment under Order 14 by way of summons in chambers. Thereupon the defendant company sought to set aside the summons on the ground that undue delay on the part of the plaintiff would disentitle him to summary judgment. Counsel for the defendant company cited the case of *McLardy* v. *Slateum* [1] in support of his contention. In that case an application for summary judgment was successfully made one month after a defence was filed. The position is clearly stated by Pollock B. at page 506:—

"The view taken by other judges, and by the masters, is that the intention of Order 14, r. 1 was that the plaintiff should apply within a reasonable time after the appearance of the defendant, but that it very often happens that a defence, which has been delivered, itself discloses facts which make an application under Order 14 right and proper. We think that this is the proper construction of the rule . . . . Although the primary intention of the rule may be that an application should be made before defence has been delivered in the ordinary course, yet we think that it is not in all cases compulsory. Therefore our judgment upon this point of law and practice is that a plaintiff is not necessarily too late in making his application under Order 14, r. 1 because a defence has been delivered . . . . If a plaintiff makes his application after the ordinary time, the onus is on him to shew that the delay is justifiable under the special circumstances of the case."

Counsel for the plaintiff contended that the delay was reasonable and preferred the following reasons, namely, that the Department of Inland Revenue is a very large department, heavily loaded with work and shorthanded; and the situation was aggravated by the intervening Puasa hours, court vacation and festivities, namely Hari Raya Puasa, Christmas and the New Year holidays. In the light of what has been stated, I am disposed to hold that the delay of a lapse of 3 months in the circumstances of the case is not inordinate and does not warrant a dismissal of the application.

The course that I have taken is further strengthened and justified by the findings I have made below. It will be convenient to look at the pleadings in this case and to consider the defence in the light of whether it is *bona fide* or whether it raises any triable issues. The amount of income tax claimed by the plaintiff, as stated earlier, is in respect of years of assessment 1964, 1965 and 1966 inclusive of penalties imposed. As stated in paragraph 6 of the statement of defence the assessments in respect of the three years were made under dispute but there is nothing on record to show whether there was any appeal made to the Special Commissioners of Income Tax. The issues as raised in the statement of defence are matters which ought to be determined by the special commissioners and the machinery for appeal against an assessment is clearly provided for in section 74 *et seq.* of the Ordinance. It is of significance to note that the levying of tax must be distinguished from the assessment of income; the latter is eminently a matter for the special commissioners. Section 82 of the Income Tax Ordinance, 1947 states:—

"Subject to the provisions of section 87 of this Ordinance, tax for any year of assessment levied in accordance with the provisions of section 38 or 39 of this Ordinance shall, notwithstanding any objection or appeal against the assessment on which such tax is levied, be payable at the place stated in the notice given under section 72 of this Ordinance within one month after the service of such notice;".

The law on this point is well established and requires no further elucidation. Choor Singh J. in the case of *Comptroller of Income Tax* v. *A. Company Ltd.* [2] expressed the following view:—

"In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assessment to a taxpayer calling upon him to pay the tax mentioned in the notice, the taxpayer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the Comptroller to review and revise the assessment made upon him. If the Comptroller refuses to amend the assessment, the aggrieved taxpayer may appeal to the Board of Review appointed under section 78 of the Ordinance and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereon as it may deem fit. The taxpayer or the Comptroller may then appeal to the High Court on the decision of the board upon any question of law or mixed law and fact. A taxpayer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order 14 of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done, every unwilling taxpayer will refuse to pay tax and when sued in court, would challenge the merits of the assessment, thus causing considerable delay in the collection of the tax.

The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review."

It will be observed that the provisions of the Singapore Income Tax Ordinance are virtually identical with the corresponding provisions of the Income Tax Ordinance in the States of Malaya (except that they differ in the numbering of the sections). The other case in point is the *Comptroller of Income Tax* v. *R.S.T.*[3] where Tan Ah Tah J. (as he then was) observed:—

"It was contended by counsel for the defendant that certain triable issues had been raised and that therefore the defendant should have been given leave to defend his action. One of these issues was said to be whether or not the sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation. On this point it is sufficient to say that it is eminently a matter for the determination of the Board of Review which was constituted under the Income Tax Ordinance to determine, *inter alia*, question of that very nature.

Another point raised on behalf of the defendant concerned the tax claimed for the year of assessment, 1951. It was said that if the amounts received by the defendant could be considered to be income, such income was exempt from tax as it arose from sources outside Singapore and was received by the defendant while he was in Singapore for some temporary purpose. This again is a matter for the determination of the Board of Review."

Having considered all aspects of the case, I am satisfied that there is no question of fact or law which ought to be tried or argued in this case; and I am further satisfied that the defendant company has not shown that it has a *bona fide* defence. If the plaintiff is precluded from the application for summary judgment, it would only mean unnecessary prolongment of the case, resulting in a waste of time and added expense for the defendant company. This would be an opportune juncture to quote a familiar *dicta* of Halsbury L.C. in *Jacobs* v. *Booth's Distillery Co.*[4]

"People do not seem to understand that the effect of O. 14 is that, upon the allegation of the one side or the other, a man is not to be permitted to defend himself in a court; that his rights are not to be litigated at all. There are some things too plain for argument; and where there were pleas put in simply for the purpose of delay, which only added to the expense, and where it had not been in aid of justice that such things should continue, O. 14 was intended to put an end to that state of things, and to prevent sham defences from defeating the rights of the parties by delay, and at the same time causing great loss to the plaintiffs who were endeavouring to enforce their rights."

A certificate under section 86(3) of the Income Tax Ordinance has been produced, and I accordingly allow the plaintiff's application in terms of the summons in chambers.

*Application allowed.*

Solicitors: *Chung & Huang.*

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## *RE* LEE AH MENG

**[O.C.J. (Raja Azlan Shah J.) April 3, 1969]**

**[K.L. — Originating Motion No. 8 of 1969]**

*Election — Expenses — Omission to transmit return of, within required time — Illegal practice — Reasonable excuse — Power of court to allow authorised excuse — Responsibility of election agent — Election Offences Ordinance, 1954, s. 30(1).*

This was an application for an authorised excuse for an omission to transmit a return relating to election expenses within the required time. In support of his application the applicant stated that he had left the preparation of the return to his election agent who had been unable to complete the return in time because of pre-occupation with another election.

**Held:** (1) the grant for an authorised excuse is solely discretionary and not arbitrary; the discretion must be exercised in accordance with sound and reasonable judicial principles;

(2) the applicant in this case had shown by his affidavit that the failure to transmit the return was not by reason of any want of good faith on his part but due to the inadvertence of his agent and therefore the court would relieve the applicant and allow him to transmit the return after the required time.

*Cases referred to:—*

(1) *Ling See Lock* v. *Supervisor of Elections & Ors.* [1965] 2 M.L.J. 73.

(2) *Ex Parte Polson & Anor.* (1923), 39 T.L.R. 231.

ORIGINATING MOTION.

*K.L. Devasar* for the applicant.

*Kamarul Ariffin* for the successful candidate.

**Raja Azlan Shah J.** (delivering oral judgment): This is an *ex parte* application by way of originating motion by Lee Ah Meng for an authorised excuse for an omission to transmit a return relating to election expenses within the required time. As required by sub-section (1) of section 30 of the Election Offences Ordinance, 1954, notice of the said application was served on the successful candidate Enche Musa bin Hitam, the returning officer and a voter of the constituency in which the election was held (see also *Ling See Lock* v. *Supervisor of Elections & Ors.*[1]). Sub-section (1) of section 23 of the Ordinance requires that within 31 days after the date of publication of the result of the election in the *Gazette* the election agent shall deposit with the proper officer — in this case the returning officer — a true return in the manner prescribed in the sub-section. Sub-section (2) requires a statement on oath by the candidate and his agent to accompany the said return. Failure to comply with the statutory provisions constitutes an illegal practice. But if the candidate applies to the election judge and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason